

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:11-cv-51-RJC**

CHRISTOPHER LEON JOHNSON,)	
)	
Petitioner,)	
)	
)	
v.)	<u>ORDER</u>
)	
)	
ALVIN W. KELLER,)	
)	
Respondent.)	
)	

THIS MATTER is before the court on Petitioner Christopher Leon Johnson's ("Petitioner") "Motion to Withdraw," (Doc. No. 13), his "Petition for Writ of Habeas Corpus" ("Petition"), (Doc. No. 1).

I. BACKGROUND

Petitioner filed his "Petition," (Doc. No. 1), on March 14, 2011. Respondent filed an "Answer," (Doc. No. 4), and "Motion for Summary Judgement," (Doc. No. 5), on April 1, 2011. Petitioner then filed a "Motion to Proceed *In Forma Pauperis*," (Doc. No. 9), which was denied by this Court. On July 7, 2011, Petitioner filed a "Motion to Withdraw," (Doc. No. 13), so that he could "re-file to lower courts the right way." Respondent has not objected to Petitioner's "Motion to Withdraw," (Doc. No. 13).

II. ANALYSIS

Under Federal Rule of Civil Procedure 41, a plaintiff may dismiss an action without a court order unless the opposing party has already served an answer or a motion for summary judgement. FED. R. CIV. P. 41(a)(1)(A). In this case, Respondent filed an "Answer," (Doc. No.

4), and a “Motion for Summary Judgement,” (Doc. No. 5), prior to Petitioner filing his “Motion to Withdraw,” (Doc. No. 13). Therefore, an order from this Court is required pursuant to Rule 41(a)(2). Respondent has not responded or objected to Petitioner’s request. Therefore, the Court will **GRANT** Petitioner’s “Motion to Withdraw,” (Doc. No. 13).

IV. CONCLUSION

IT IS, THEREFORE, ORDERED that Petitioner’s “Motion to Withdraw,” (Doc. No. 13), is **GRANTED**, and his “Petition for Writ of Habeas Corpus,” (Doc. No. 1), is **DISMISSED** without prejudice.

Signed: January 20, 2012



Robert J. Conrad, Jr.
Chief United States District Judge
